680.

SUPREME COURT OF THE UNITED STATES.

No. 107.

DAVID DUNHAM WITHERS, PLAINTIFF IN ERROR,

vs.

RANSOM BUCKLY, DANIEL WILSON, NEWTON HUFF, HUGH R. DAVIS, DOUGLASS H. COOPER, CHARLES N. VAUGHAN, AND JAMES METCALF.

IN ERROR TO THE HIGH COURT OF ERRORS AND APPEALS OF THE STATE OF MISSISSIPPI.

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GIDEON, Print.

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THE STATE OF MISSISSIPPI.

Pleas had at a term of our high court of errors and appeals, begun and held for said State, at the court-room in the capitol at the city of Jackson, on the third Monday of April, A. D. 1855. Present, the honorable C. P. Smith, presiding judge of our said high court, and the honorable E. S. Fisher and the honorable A. Handy, associate judges. Present, also, Caswell R. Clifton, clerk of our said court; Drury J. Brown, sheriff of Hinds county, by his deputies, being also in attendance there, and as is provided by statute.

COMMISSIONERS OF HAMOCHITTO RIVER, appellants,
vs.
DAVID D. WITHERS. } 6,903.

Be it remembered, that heretofore, to wit, on the 8th day of October, the above named appellants filed in the office of the clerk of the high court of errors and appeals a transcript of the record of a suit lately pending in the southern district chancery court at Natchez, in the name of David D. Withers, against the said appellants, which said suit was brought into our high court by appeal; said transcript of record with the proceedings and final decree of our said high court thereon, is in the words and figures following, to wit:

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi.

DAVID D. WITHERS
vs.
COMMISSIONERS OF THE HAMOCHITTO RIVER.

Pleas before the honorable A. B. Dawson, vice chancellor of the State of Mississippi for the southern district, at a southern district chancery court, begun and held at the court-room in the city of Natchez, county of Adams, and State aforesaid, on the fourth Monday in June, in the year of our Lord one thousand eight hundred and fifty-three.

Be it remembered, that heretofore, to wit, on the 25th day of June, A. D. 1852, the complainant, by his solicitor, filed in the office of the clerk of our said southern district chancery court his certain bill of complaint against the said defendants, Alexander K. Farrar, James Metcalf, James Aikin, Ransom Buckly, Newton Huff, Daniel Wilson, Hugh R. Davis, and Douglass H. Cooper, commissioners of the Hamochitto river, which is in the words and figures following, to wit:

Bill of Complaint.

To the honorable James M. Smiley, vice chancellor of the southern district chancery court of the State of Mississippi, to be holden in the city of Natchez:

Humbly complaining, showeth unto your honor, your orator, David Durham Withers, of the city of New Orleans, and State of Louisiana,

for; and that said acts of said legislature are in direct violation of the act of the Congress of the United States, passed March 1st, 1817, authorizing the people of the then Mississippi Territory to form a constitution, and to admit said State into the Union, &c; of the ordinance passed 15th August, 1817, by the convention held in pursuance of said act of Congress, both of which declares that the Mississippi river, and the navigable rivers and waters leading into the same, shall be common highways, and *and* forever free as well to the inhabitants of this State as to other citizens of the United States; and your orator charges that the diversion of the waters of the Hamochitto and Old rivers by the canal now making, or about being made, would entirely destroy the navigation of Old river, by way of the narrows or natural channel, which has been free and open to all ever since and prior to said acts and ordinance of 1817.

Your orator further charges, that he believes said acts of the legislature of the State of Mississippi were obtained either by improper or mistaken representations of the objects to be accomplished by the passage of said acts, and that the same were obtained for the attainment of the private ends of said commissioners and others at the public expense.

Your orator further charges, that said commissioners either now have, or will immediately commence the excavation for said canal, which your orator is informed and believes will be but about two hundred yards in length, for the purpose of diverting said waters from Old river to the Buffalo; all of which actings and doings of the said commissioners are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and for as much as your orator is remediless in the premises, at and by the strict rules of the common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable and relievable: To the end, therefore, that the said Ransom Buckley and James Aikin, of Franklin county; Daniel Wilson and Newton Huff, of Amite county; Hugh R. Davis and Douglass H. Cooper, of Wilkinson county; and amended by substituting name of Charles N. Vaughan as successor of A. K. Farrar and James Metcalf, of Adams county, and their successors in office, may be made parties defendant hereto, and that they may respectively full, true, and perfect answers make upon their respective corporal oaths, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that, as fully and particularly in every respect as if the same were here again repeated and they thereunto particularly interrogated; and that the said defendants *an* their successors, their agents, servants, and employees of every kind, may be restrained by *and* injunction from cutting and excavating a canal or any other outlet from Old river to the Buffalo or other river, and from diverting the waters of the Hamochitto and Old rivers from their present natural channel; and also from making a levy across the present outlet of Hamochitto and Old river; and that upon a final hear-

ing of the matters herein contained by the order and decree of this honorable court, said defendants and their successors in office, and each of them, their attorneys, agents, servants, and employees, and each of them, may be, by an injunction issuing under the seal of this court, perpetually restrained from cutting or excavating said canal or other outlet from Old river to the Buffalo river or bayou, and from diverting the waters of the Hamochitto and Old rivers from their present natural channel; and that your orator shall have such other and further relief as the nature of his case shall require, and as shall be agreeable to equity. May it please your honor to grant unto your orator a writ of injunction, issuing out of and under the seal of this court, directed to the said defendants, their attorneys, agents, servants, and employees, commanding them and each of them from proceeding to cut or excavate a canal or other outlet from Old river to the Buffalo river, and from diverting the waters of the Hamochitto and Old rivers from their present natural channel.

May it please your honor to grant unto your orator the writ of subpœna, issuing out of and udner the seal of this honorable court, to be directed to the said defendants, commanding them and each of them by a certain day, and under a certain penalty therein to be inserted, to be and appear before this honorable court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience; and your orator shall ever pray, &c.

D. D. WITHERS, *Compt.*
CARSON & SHIELDS, *for Compt.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known on this twenty-eighth day of May, 1852, before me, Edwin Floyd, a commissioner of deeds of Mississippi for Louisiana, duly commissioned and sworn, personally appeared the above named David Durham Withers and made oath that he has read the above bill subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are there stated to be on his information and belief, and as to those matters he believes it to be true:

As witness my official seal and signature this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and fifty-two.
[SEAL.]

ED. FLOYD,
Commissioner of Mississippi for Louisiana.

STATE OF MISSISSIPPI,
Hinds County.

Personally appeared before me, Charles Scott, chancellor of the State of Mississippi, the above-named David Durham Withers, who made oath that the matters and thing stated in the foregoing, as of his own

knowledge, are true, and those stated from information he believes to be true.

D. D. WITHERS.

Sworn to and subscribed before me, this 18th June, 1852.

CHAS. SCOTT, *Chancellor.*

STATE OF MISSISSIPPI.

To the Clerk of the Vice Chancery Court of the Southern District, held at Natchez in said State.

Let writs of subpœna and injunction issue as prayed for in the above and foregoing bill of complaint, upon complainant entering into bond with A. M. Feltus, or John D. Cobb and C. A. Manlove as his sureties, in the penalty of five thousand dollars, payable and conditioned according to law.

Given under my hand this 18th June, 1852.

CHAS. SCOTT, *Chancellor.*

And at the time of filing the foregoing bill of complaint, was also filed by said complainant the following injunction bond in this cause—to wit:

Injunction Bond.

THE STATE OF MISSISSIPPI,
Adams County.

Know all men by these presents, that we, David Durham Withers and Abraham M. Feltus, are held and firmly bound unto Ransom Buckley, James Aikin, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Alexander K. Farrar, and James Metcalf, commissioners of the Hamochitto river, in the sum of five thousand dollars, to be paid to the said Buckley, Aikin, Wilson, Huff, Davis, Cooper, Farrar, and Metcalf, and their successors or assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators firmly by these presents; sealed with our seals and dated this twenty-third day of June, 1852.

The condition of this obligation is such, that whereas the above-bound David D. Withers having obtained from the honorable Charles Scott, chancellor, &c., a fiat directed to the clerk of the southern district chancery court at Natches, allowing an injunction restraining said commissioners, agents, servants, and employees, from cutting and excavating a canal, or any other outlet, from Old river to the Buffalo, or other river, and from diverting the waters of Hamochitto and Old river from their present natural channel; and also from making a levy across the present outlet of Hamochitto and Old river, wherein the said David D. Withers is complainant, and the said Buckley, Aikin, Wilson, Huff, Davis, Cooper, Farrar, and Metcalf, commissioners as aforesaid, are defendants:

Now, if the said complainant shall prosecute his bill of injunction with effect, or, failing therein, shall abide by the decision of said south-

ern district chancery court at Natchez, and pay all such damages, interest and costs as the aforesaid southern district chancery court shall award in the premises, then and in that case the above obligatioa to be void, otherwise to remain in full force and virtue.

D. D. WITHERS, [SEAL.]
A. M. FELTUS. [SEAL.]

And at the time of filing the foregoing bill of complaint, the following four writs of injunction were issued by the clerk of our said southern district chancery court in this cause, to wit:

Injunction.

THE STATE OF MISSISSIPPI.

Southern district chancery court of the State of Mississippi.

To Hugh R. Davis and Douglass H. Cooper, commissioners of the Hamochitto river, your agents and attorneys, &c., and James Aikin, greeting:

Whereas it hath been represented to us in our southern district chancery court, on the part of David D. Withers, complainant, that he has lately exhibited his bill against you, Hugh R. Davis and Douglass H. Cooper, Jas. Aikin and others, commissioners of the Hamochitto river, defendants, to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Hugh R. Davis and Douglass H. Cooper et als., commissioners, &c., under the penalty of five thousand dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from cutting and excavating a canal, or any other outlet, from Old river to the Buffalo or other river, and from diverting the waters of the Hamochitto and Old river from their present natural channel, and also from making a levy across the present outlet of Hamochitto and Old river, and from any further proceedings against the said complainant touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the court-room in the city of Natchez, the fourth Monday in Decem-
[SEAL.] ber, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF WILKINSON COUNTY.

Upon which writ of injunction is the following sheriff's return:

"Rec'd 26th June, 1852.

THOS. W. HAYS, *Sh'ff.*

Executed on Douglass H. Cooper, 14th July, 1852.

T. W. HAYS, *Sh'ff*,
By T. H. CURRY, *D. S.*

Executed on H. R. Davis, 5th July, 1852.

THOS. W. HAYS, *Sh'ff.*

William S. Guin is hereby specially deputized to execute and return this writ, as to James Aikin.

Witness my hand and seal this 6th day of July, 1852.

THOS. W. HAYS, *Sh'ff.* [SEAL.]

Executed on James Aikin, 8th July, 1852.

T. W. HAYS, *Sh'ff*,
By WM. S. GUIN, *D.S.*

Injunction.

THE STATE OF MISSISSIPPI,
Southern district chancery court of the State of Mississippi.

To Newton Huff and Daniel Wilson, Commissioners of the Hamochitto River, greeting:

Whereas, it hath been represented to us in our southern district chancery court, on the part of David D. Withers, complainant, that he has lately exhibited his bill against you, Newton Huff and Daniel Wilson and others, commissioners of the Hamochitto river, defendants, to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Newton Huff and Daniel Wilson, commissioners, &c., under the penalty of five thousand dollars, to be levied of your goods and chattels, lands and tenements, to our use; that you absolutely refrain from cutting and excavating a canal or any other outlet from Old river to the Buffalo or other river, and from diverting the waters of the Hamochitto and Old river from their present natural channel; and also from making a levy across the present outlet of Hamochitto and Old river, and from any further proceedings against the said complainant, touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the court-room in the city of Natchez, the fourth Monday in Decem-
[SEAL.] ber, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF AMITE COUNTY.

Upon which writ of injunction is the following sheriff's return:

Rec'd July 2d, 1852.

E. G. WICKER, *Sh'ff.*

Executed on Daniel Wilson the 21st July, 1852, and on Newton Huff the 31st July, 1852.

E. G. WICKER, *Sh'ff,*
By J. B. ROBINSON, *D. S.*

Injunction.

THE STATE OF MISSISSIPPI,
Southern district chancery court of the State of Mississippi.

To Ransom Buckley and James Aikin, Commissioners of the Hamochitto River, greeting:

Whereas, it hath been represented to us in our southern district chancery court, on the part of David D. Withers, complainant, that he has lately exhibited his bill against you, Ransom Buckley and James Aiken and others, commissioners of the Hamochitto river, defendants, to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Ransom Buckley and James Aiken and others, commissioners, &c., under the penalty of five thousand dollars, to be levied of your goods and chattels, lands and tenements to our use, that you absolutely refrain from cutting and excavating a canal or any other outlet from Old river to the Buffalo or other river, and from diverting the waters of Hamochitto and Old river from their present natural channel, and from any further proceedings against the said complainant, touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the court room in the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF FRANKLIN COUNTY.

Upon which writ of injunction is the following sheriff's return:

Rec'd July 2d, 1852; duly executed September 9th, 1852.

W. M. WENTWORTH, *Sh'ff.*

Injunction.

THE STATE OF MISSISSIPPI,
Southern district chancery court of the State of Mississippi.

To Alexander K. Farrar, and James Metcalf, and James Aikin, Commissioners of the Hamochitto River, greeting:

Whereas it hath been represented to us, in our southern district chancery court, on the part of David D. Withers, complainant, that he has lately exhibited his bill against you, Alexander K. Farrar, James Metcalf and James Aikin, and others, commissioners of the Hamochitto river, defendants, to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises and of the allegations in said bill contained, strictly enjoin and command you, the said Alexander K. Farrar, James Metcalf and James Aikin, under the penalty of five thousand dollars, to be levied of your goods and chattels to our use, that you absolutely refrain from cutting and excavating a canal or any other outlet from Old river to the Buffalo or other river, and from diverting the waters of the Hamochitto and Old river from their present natural channel, and also from making a levy across the present outlet of Hamochitto and Old river, and from any further proceedings against the said complainant touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district, at the court-room in the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk*.

To the SHERIFF OF ADAMS COUNTY.

Upon which writ of injunction is the following sheriff's return:

Executed 26th June, 1852, on Alexander K. Farrar; on James Metcalf the 28th June, 1852; on James Aikin, 7th Aug't, 1852.

S. B. NEWMAN, *Sh'ff*.

I gave notice of this injunction by reading the same to C. N. Vaughan, successor to A. K. Farrar, as com'r, on 26th June, 1852.

S. B. NEWMAN, *Sh'ff*.

And at the time of filing the foregoing bill of complaint, the clerk of our said southern district chancery court issued the following four subpœnas in this cause, to wit:

Subpœna.

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi, to wit:

To Alexander K. Farrar and James Metcalf and James Aikin, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that, laying all other matters aside, and notwithstanding any excuse, you personally appear at a southern district chancery court to be holden at the court-room in the city of Natchez, on the fourth Monday in December next ensuing, to answer *to answer* a bill of complaint exhibited against you and others by David D. Withers, complainant, in our said court; and further to do and receive what our said court shall have considered of in this behalf; and this you shall in nowise omit, under a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the city of Natchez, on the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF ADAMS COUNTY, to execute and return.

Upon which subpœna is the following sheriff's return:

Executed 26th June, 1852, on Alex. K. Farrar; on James Metcalf, the 28th June, 1852; on James Aikin, 7th Aug't, 1852.

S. B. NEWMAN, *Sh'ff.*

Subpœna.

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi, to wit:

To Ransom Buckley and James Aikin, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-room in the city of Natchez, on the fourth Monday in December next ensuing, to answer a bill of complaint exhibited against you and others by David D. Withers, complainant, in our said court; and further to do and receive what our said court shall have considered of in this behalf, and this you shall in nowise omit, under

a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk*.

To the SHERIFF OF FRANKLIN COUNTY, to execute and return.

Upon which subpœna is the following sheriff's return:

Rec'd July 2d, 1852; duly executed, September 9th, 1852.

W. M. WENTWORTH, *Sh'ff*.

Subpœna.

THE STATE OF MISSISSIPPI,
Southern district chancery court of the State of Mississippi, to wit:

To Newton Huff and Daniel Wilson, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all matters aside, and, notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-room, in the city of Natchez, on the fourth Monday in December next ensuing, to answer a bill of complaint exhibited against you and others, by David D. Withers, complainant, in our said court, and further to do and receive what our said court shall have considered of in this behalf, and this you shall in nowise omit, under a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk*.

To the SHERIFF OF AMITE COUNTY, to execute and return.

Upon which Subpœna is the following sheriff's return:

Rec'd July 2d, 1852. E. G. WICKER, *Sh'ff*.

Duly executed on Daniel Wilson, the 21st July, 1852, and on N. L. Huff, the 31st July, 1852.

E. G. WICKER, *Sh'ff*,
By J. B. ROBINSON, *D. S.*

Subpœna.

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi, to wit:

To Hugh R. Davis, Douglass H. Cooper, and James Aikin, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-room in the city of Natchez, on the fourth Monday in December next ensuing, to answer a bill of complaint exhibited against you and others, by David D. Withers, complainant, in our said court, and further to do and receive what our said court shall have considered of in this behalf; and this you shall in nowise omit, under a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clk.*

To the SHERIFF OF WILKINSON COUNTY, to execute and return.

Upon which subpœna is the following sheriff's return:

Rec'd 26th June, 1852. THOS. W. HAYS, *Sh'ff.*

Executed on Douglass H. Cooper, 14th July, 1852.

THOS. W. HAYS, *Sh'ff,*
By T. H. CURRY, *D. S.*

Executed on H. R. Davis, 5th July, 1852.

THOS. W. HAYS, *Sh'ff.*

William S. Guin is hereby specially deputized to execute and return this writ as to James Aiken.

Witness my hand and seal, this 6th day of July, 1852.

THOS. W. HAYS, *Sh'ff.* [SEAL.]

Executed on James Aiken, 8th July, 1852.

THOS. W. HAYS, *Sh'ff.*
By WM. S. GUIN, *S. D. S.*

And afterwards, to wit, on the 12th day of July, A. D. 1852, the clerk of our said southern district chancery court issued the following writ of injunction in this cause, to wit:

a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF FRANKLIN COUNTY, to execute and return.

Upon which subpœna is the following sheriff's return:

Rec'd July 2d, 1852; duly executed, September 9th, 1852.

W. M. WENTWORTH, *Sh'ff.*

Subpœna.

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi, to wit:

To Newton Huff and Daniel Wilson, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all matters aside, and, notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-room, in the city of Natchez, on the fourth Monday in December next ensuing, to answer a bill of complaint exhibited against you and others, by David D. Withers, complainant, in our said court, and further to do and receive what our said court shall have considered of in this behalf, and this you shall in nowise omit, under a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clerk.*

To the SHERIFF OF AMITE COUNTY, to execute and return.

Upon which Subpœna is the following sheriff's return:

Rec'd July 2d, 1852. E. G. WICKER, *Sh'ff.*

Duly executed on Daniel Wilson, the 21st July, 1852, and on N. L. Huff, the 31st July, 1852.

E. G. WICKER, *Sh'ff,*
By J. B. ROBINSON, *D. S.*

Subpœna.

THE STATE OF MISSISSIPPI,

Southern district chancery court of the State of Mississippi, to wit:

To Hugh R. Davis, Douglass H. Cooper, and James Aikin, Commissioners of the Hamochitto River, greeting:

For certain causes offered before us in our southern district chancery court of the State of Mississippi, we command and strictly enjoin you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at a southern district chancery court, to be holden at the court-room in the city of Natchez, on the fourth Monday in December next ensuing, to answer a bill of complaint exhibited against you and others, by David D. Withers, complainant, in our said court, and further to do and receive what our said court shall have considered of in this behalf; and this you shall in nowise omit, under a penalty of one hundred dollars, as well as the consequences that may fall thereon, and have then and there this writ.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district, at the city of Natchez, the fourth Monday in December, in the year of our Lord one thousand eight hundred and fifty-one, and of the sovereignty and independence of the United States of America the 76th.

[SEAL.]

Issued the 25th day of June, 1852.

E. S. RUSSELL, *Clk.*

To the SHERIFF OF WILKINSON COUNTY, to execute and return.

Upon which subpœna is the following sheriff's return:

Rec'd 26th June, 1852. THOS. W. HAYS, *Sh'ff.*

Executed on Douglass H. Cooper, 14th July, 1852.

THOS. W. HAYS, *Sh'ff,*
By T. H. CURRY, *D. S.*

Executed on H. R. Davis, 5th July, 1852.

THOS. W. HAYS, *Sh'ff.*

William S. Guin is hereby specially deputized to execute and return this writ as to James Aiken.

Witness my hand and seal, this 6th day of July, 1852.

THOS. W. HAYS, *Sh'ff.* [SEAL.]

Executed on James Aiken, 8th July, 1852.

THOS. W. HAYS, *Sh'ff.*
By WM. S. GUIN, *S. D. S.*

And afterwards, to wit, on the 12th day of July, A. D. 1852, the clerk of our said southern district chancery court issued the following writ of injunction in this cause, to wit:

Injunction.

THE STATE OF MISSISSIPPI,
Southern district chancery court of the State of Mississippi.

To Ransom Buckley, James Aikin, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Alexander K. Farrar, and James Metcalf, commissioners of the Hamochitto river, and their successors, their agents, servants, and employees of every kind, greeting:

Whereas, it hath been represented to us in our southern district chancery court, on the part of David Durham Withers, complainant, that he has lately exhibited his bill against you—Buckley, Aiken, Wilson, Huff, Davis, Cooper, Farrar, and Metcalfe, commissioners, &c., defendan ts—to be relieved touching the matters in said bill contained: We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Buckley, Aikin, Wilson, Huff, Davis, Cooper, Farrar, and Metcalfe, commissioners, &c., their successors, their agents, servants, and employees, of every kind, under the penalty of five thousand dollars, to be levied of your goods and chattels, lands and tenements to our use, that you absolutely refrain from cutting and excavating a canal or any other outlet from Old river to the Buffalo or other river, and from diverting the waters of the Hamochitto and Old river from their present natural channel; and also, from making a levy across the present outlet of Hamochitto and Old river, and from any further proceeding against the said complainant touching any of the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable James M. Smiley, vice chancellor of the State of Mississippi, for the southern district, at the court-room, in the city of Natches, the fourth Monday in [SEAL.] June, in the year of our Lord one thousand eight hundred and fifty-two, and of the sovereignty and independence of the United States of America the 76th.

Issued the twelfth day of July, 1852.

E. S. RUSSELL, *Clerk.*
By ROBT. WOOD, *Dep. Clerk.*

To the SHERIFF OF WILKINSON COUNTY.

Upon which writ of injunction is the following sheriff's return, to wit:
Rec'd 15th July, 1852. THOS. W. HAYS, *Sh'ff.*

Executed on H. R. Davis and D. H. Cooper, commissioners, &c., 19th July, 1852, and other com'rs not found.

THOS. W. HAYS, *Sh'ff.*

Executed on Robert Skirley, agent, &c., and on Henry McGrand and John Brown, employees, &c., 19th July, 1852.

T. W. HAYS, *Sh'ff,*
By G. S. MORRIS, *D. S.*

Executed on Thomas H. Handorar, Thomas Williams, John Reed, Edward Murphy McKean, and T. Taylor, employees, &c., 26th July, 1852.

T. W. HAYS, *Sh'ff*,
By G. S. MORRIS, *D. Sh'ff.*

Robert Watson is hereby specially deputized to execute and return this writ as to Alexander Hay, agent, &c.

Witness my hand and seal, this 4th day of October, A. D. 1852.

THOS. W. HAYS, *Sh'ff.* [SEAL.]

Executed on Alexander Hay, agent, &c., 9th October, 1852.

THOS. W. HAYS, *Sh'ff*,
By ROBERT WATSON, *S. D. S.*

On the 30th day of June, A. D. 1852, the defendants, by their solicitor, filed in the office of the clerk of our said southern district chancery court their following demurrer in this cause, to wit:

Demurrer.

In the Southern District Chancery Court of Mississippi, sitting at Natchez.

DAVID D. WITHERS, complainant,
vs.
COMMISSIONERS OF THE HAMOCHITTO RIVER.

The joint and several demurrer of Ransom Buckley, James Aikin, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Alexander K. Farrar, and James Metcalfe, to the bill of complaint lately exhibited and now pending in this court against them, as Commissioners of the Hamochitto River, by David D. Withers.

These defendants, by protestation, not confessing or acknowledging all or any of the matters in and by the said bill set forth and complained of to be true, in manner and form as the same are therein and thereby set forth and alleged, severally say, they are advised that there is no matter or thing in the said complainant's bill of complaint contained, good or sufficient in law to call these defendants to account in this honorable court for the same; but that there is good cause of demurrer thereunto, and that they do demur thereunto accordingly; and for cause of demurrer, they say that the complainant's said bill of complaint, in case the same were true, which these defendants do in no-wise admit, contains not any matter of equity wherein this court can ground any decree, or give the complainant any relief or assistance as against them, these defendants. Wherefore, and for divers other errors and defects in the complainant's said bill of complaint, and appearing on the face thereof, these defendants do, as aforesaid, demur *demur* in law thereto, and humbly crave the judgment of this honorable court, whether they are compellable or ought to make any answer thereto, other than as aforesaid; and these defendants humbly pray to be hence dismissed, with their costs in this behalf most wrongfully sustained.

RALPH NORTH,
Solicitor for Defendants.

On the 30th day of June, A. D. 1852, the following agreement of counsel was filed in this cause, to wit:

Agreement of Counsel.

In the Southern District Chancery Court, June Term, 1852.

DAVID D. WITHERS
vs.
COMMISSIONERS OF THE HAMOCHITTO RIVER. } No. 714.

This cause having been set down for hearing by defendants on demurrer at this term, it was agreed by counsel that the same should be continued for hearing until the next term of this court; and that either party, upon the decision thereof by his honor, the vice chancellor, may appeal from such decision directly to the high court of errors and appeals, the right of appeal to the superior court of chancery being hereby waived; and it is further agreed, that defendants may, if they desire it, withdraw their demurrer, and put in lieu thereof a demurrer accompanied with an answer, or an answer, within 90 days from this date; and that both parties may then take depositions, so as to bring on the cause for hearing at said December term; and that complainant, within said period of 90 days, may amend his bill by striking out and adding necessary parties, or by any other amendment, within sixty days, such amendments to be without prejudice to a hearing at said December term.

RALPH NORTH,
Sol. for Def'ts.
CARSON & SHIELDS, and
G. S. YERGER,
For Compl't.

June 30, 1852.

And afterwards, to wit, on the 5th day of July, A. D. 1853, being the June term, A. D. 1853, of our said southern district chancery court, the following order was made and entered of record in this cause, to wit:

Demurrer overruled.

DAVID D. WITHERS
vs.
COMMISSIONERS OF THE HAMOCHITTO RIVER. } In Chancery.

This cause coming on to be heard upon the demurrer of the defendants to the bill of complaint, it is ordered that the same be overruled, with leave to said defendants to file their answer herein within 120 days, without prejudice to the trial at the next term of this court.

And afterwards, to wit, on the 7th day of July, A. D. 1853, being the June term, A. D. 1853, of our said southern district chancery court, the following order was made and entered of record in this cause, to wit:

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DAVID D. WITHERS
vs.
COMMISSIONERS OF THE HAMOCHITTO RIVER. } In Chancery.

The defendants, the commissioners of the Hamochitto river, feeling themselves aggrieved by the decision of the court in overruling the demurrer of said defendants, prays an appeal to the high court of errors and appeals of the State of Mississippi, which, with the consent of complainant's solicitor, is granted, upon the defendant, James Metcalfe, president of said commissioners of the Hamochitto river, executing bond for costs in the sum of two hundred dollars, conditioned according to law, with Charles N. Vaughan, as his security, within sixty days, by and with the consent of both complainant and defendants.

And afterwards, to wit, on the 27th day of August, A. D. 1853, the defendants filed their following appeal bond in this cause, to wit:

Appeal Bond.

Know all men by these presents, that we, James Metcalfe, president of the commissioners of the Hamochitto river, and Charles N. Vaughan, are held and firmly bound unto David D. Withers in the sum of two hundred dollars, for the payment of which well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this first day of August, 1853.

The condition of the above obligation is such, that whereas the above bound James Metcalfe, president of the commissioners of the Hamochitto river, has prayed for and obtained an appeal to the high court of errors and appeals of the State of Mississippi, from the decision of the southern district chancery court of the State of Mississippi, holding sessions at the city of Natchez, in overruling the demurrer of the defendants at the June term, A. D. 1853, in the suit wherein David D. Withers is complainant, and the Commissioners of the Hamochitto River are defendants:

Now, if the said commissioners of the Hamochitto river shall well and truly prosecute their said appeal with effect, or failing therein, shall well and truly pay all such costs and damages as may be awarded against them, in case the decision of the southern district chancery court shall be affirmed, then the above obligation to be void, otherwise to remain in full force and effect.

JAMES METCALFE, [SEAL.]
C. N. VAUGHAN, [SEAL.]

THE STATE OF MISSISSIPPI,
Southern district Chancery Court.

I, E. S. Russell, clerk of the southern district chancery court of the State of Mississippi, do hereby certify, that the foregoing twenty-nine pages contain a true, full, and perfect transcript of the papers, proceedings, orders, &c., of the record of the case of David D. Withers, com-

plainant, against the Commissioners of the Hamochitto River, defendants, as the same appears of record and on file in my office in the city of Natchez.

Witness my hand and the seal of our said southern district chancery court, hereunto affixed, at the city of Natchez, this 12th day of September, A. D. 1853.

E. S. RUSSELL, *Cl'k*,
By RO. W. WOOD, *Dep. Cl'k*.

And afterwards, to wit, on the 26th day of March, A. D. 1855, it being a day of the October term, A. D. 1854, of the high court of errors and appeals of the State of Mississippi, the following order was made in this cause, to wit:

COMMISSIONERS OF THE HAMOCHITTO RIVER,
vs.
DAVID D. WITHERS. } 6,903.

This cause was argued by Mr. Winchester, of counsel for the plaintiff, by Mr. Yerger, of counsel for the defendant, and by Mr. Yerger in reply, and submitted.

And afterwards, to wit, on the 16th day of April, 1855, it being a day of the April term, 1855, of said high court, the following final decree was rendered in this cause, to wit:

"This cause having been argued and submitted at the late October term of this court, upon the record from the southern district chancery court, at Natchez, and this court having sufficiently examined and considered the same, and being of opinion that there is error in the decree of said court, pronounced in favor of the appellee, and overruling the demurrer of the appellants, at the June term thereof, in the year 1853, doth think fit to order, adjudge, and decree, and accordingly it is hereby ordered, adjudged, and decreed, that said decree be, and the same is hereby reversed; and this court now proceeding to render such decree as the court below should have rendered, doth order, adjudge, and decree that the said demurrer be sustained, the injunction dissolved, and that said bill be, and the same is hereby, dismissed at the costs of the appellee, both in this court and in the court below, for which the writ of fieri facias may issue as at law, &c.

THE STATE OF MISSISSIPPI,
High Court of Errors and Appeals.

I, George T. Swann, clerk of said court, do hereby certify that the preceding twenty-eight pages contain a full, true, and perfect transcript of the record in the case wherein Commissioners of Hamochitto River were appellants, and David D. Withers was appellee, on appeal from

the southern district chancery court at Natchez, in said State, as fully and completely as the same remains of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the [SEAL.] seal of said high court, at office at the city of Jackson, in said State, this 11th day of February, A. D. 1856.

GEO. T. SWANN, *Clerk*,
By SAMUEL LIVINGSTON, *D. C.*

Bond to prosecute Writ of Error.

Know all men by these presents, that we, David Durham Withers and Geo. S. Yerger, are held and firmly bound unto Ransom Bunckley, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, in the full and just sum of five hundred dollars, to be paid to the said Ransom Bunckley, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents; sealed with our seals, and dated this 22d day of August, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas lately at the high court of errors and appeals of the State of Mississippi, in a suit depending in said court between David Dunham Withers, complainant, and the said Ransom Bunckley, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, defendants, a decree was rendered against the said David Dunham Withers, and the said David Dunham Withers having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Ransom Bunckley, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, citing and admonishing to be and appear at a supreme court of the United States, to be holden at Washington the first Monday of December next:

Now the condition of the above obligation is such, that if the said David Dunham Withers shall prosecute his said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

DAVID DUNHAM WITHERS, [SEAL.]
By his attor. GEO. S. YERGER, [SEAL.]
GEO. S. YERGER, [SEAL.]

Sealed and delivered in presence of—
Approved by

C. P. SMITH,
Chief Justice of High Court Err. and Appeals.

Citation and Service.

THE UNITED STATES OF AMERICA,

To Ranson Bunckly, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the high court of errors and appeals of the State of Mississippi, wherein David Dunham Withers is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable C. P. Smith, chief justice of the high court of errors and appeals of Mississippi, this 22d day of August, in the year of our Lord one thousand eight hundred and fifty-five.

C. P. SMITH.

On this day of in the year of our Lord one thousand eight hundred and , personally appeared before me, the subscriber, , and makes oath that he delivered a true copy of the within citation to

Executed on James Metcalfe, by handing him a copy of this citation, September 19th, 1855; on Hugh R. Davis, by posting a copy of same on the door of his dwelling, he being absent; and on Douglass H. Cooper, by handing a copy of this citation to his wife, a free white person over the age of 16 years, and a member of his family, he being absent from home; and on same day, on Chs. N. Vaughn, by handing him a copy.

RICH'D GRIFFITH,
U. S. Marshal So. Dist. Miss.
By O. METCALFE, *D. M.*

Sept'r 25, 1855.

Service acknowledged Oct. 9, 1855.

RALPH NORTH,
Of Counsel for Def'ts in Error.

Marshal's fees:

Service - - - - - -	$8 00
Mileage - - - - - -	14 04
Copies - - - - - -	2 50
E. & R. - - - - - -	50
	$25 04

RICH'D GRIFFITH,
U. S. Marshal So. Dist. Miss.

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Writ of Error.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the honorable the Judges of the high court of errors and appeals of the State of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said high court of errors and appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between David Dunham Withers, complainant, and Ransom Bunckley, Daniel Wilson, Newton Huff, Hugh R. Davis, Douglass H. Cooper, Charles N. Vaughan, and James Metcalf, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, a manifest error hath happened, to the great damage of the said Dunham Withers, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the 30th day of July, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOMAS CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by C. P. SMITH,
Chief Justice of the high court of errors and appeals of the State of Mississippi.

Filed in office clerk high court of errors and appeals of Mississippi, Aug't 22d, 1855.

C. R. CLIFTON, *C'k.*